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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

re Application of: )  
KENTARO ONUMA, et al. ) : Examiner: L. Tran  
Application No.: 09/661,388 ) : Group Art Unit: 2853  
Filed: September 13, 2000 ) :  
For: IMPROVED PRINT HEAD )  
RECOVERY : January 10, 2005

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RESPONSE TO RESTRICTION/ELECTION REQUIREMENT

Sir:

This is a response to the Office Action dated December 8, 2004, which imposed a requirement to elect between allegedly distinct species of the invention. The requirement to elect is respectfully traversed.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

Monday, January 10, 2005

(Date of Deposit)

Michael K. O'Neill, Reg. No. 32,622

(Name of Attorney for Applicant)

  
Signature

Monday, January 10, 2005  
Date of Signature

Traversal is on the ground that the Office Action failed to identify any distinct species. In particular, for example, with respect to requirement (I), which identified 12 allegedly distinct “sub-species” of recovery mechanism, it is noted that nearly all of the figures identified in the requirement illustrate various aspects of a single embodiment of the invention. It is simply impossible for a single embodiment of the invention to disclose multiple different species, for the reason that different species are always different embodiments.

On this point, MPEP § 806.04(e) is crystal clear:

“Species are always the specifically different embodiments.”  
(Emphasis in original)

Since nearly all of the figures identified in the requirement at (I) are from a single species, the Office Action fails to identify plural distinct species and the requirement is faulty.

Likewise, with respect to requirement (II) to elect between six allegedly distinct subspecies of a recovery operation, Applicants would respectfully point out that all six flowcharts identified in the requirement are different phases of operation of the same embodiment. Accordingly, for the same rationale as explained above, the Office Action has failed to identify plural distinct species.

In view of the foregoing, it is believed that the imposition of a requirement to elect is faulty and must be withdrawn.

Pursuant to 37 C.F.R. § 1.143, Applicants make the following provisional election. The election is, however, hampered by the above-noted error in the Office Action since nearly all of the figures illustrate the same single embodiment. For example, Figures

13, 14 and 15 are merely different views of the exact same recovery mechanism 60, such that it makes no sense to require an election between them. Nevertheless, for the sake of advancing prosecution and for strict compliance with the rules, the following elections are made:

For Group (I), subspecies 1B, Figure 14, upon which Claims 1 to 31 are readable;

For Group (II), subspecies 2A, Figure 30, upon which Claims 73 to 82 and 83/(73-82) are readable.

The election is made with traverse, for the reasons set out above.

A new Office Action is respectfully requested, in which the current requirement to elect has been withdrawn.

Applicants' undersigned attorney may be reached in our Costa Mesa, California office at (714) 540-8700. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,



Attorney for Applicants  
Michael K. O'Neill  
Registration No.: 32,622

FITZPATRICK, CELLA, HARPER & SCINTO  
30 Rockefeller Plaza  
New York, New York 10112-2200  
Facsimile: (212) 218-2200

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